

State of Oregon Approach to Receive Final Approval of the Coastal Nonpoint Source Control Plan.

Introduction

The purpose of this document is to identify options to the State of Oregon for addressing EPA and NOAA's conditional approval of three management measures in the State of Oregon's Coastal Nonpoint Source Control Plan (SNPCP) and getting full approval from the federal agencies for these management measures.

Three management measures in the CNPCP were identified as deficient and received conditional approvals by the federal agencies. These management measures were:

1. Forest management in Critical Coastal Areas: Specific areas that need to be addressed are:
 - a. Increased riparian protection of small, medium, and non-fish bearing streams;
 - b. High risk landslide areas;
 - c. Mitigating the impacts of legacy roads.
2. On-Site
3. Urban Development

States with an approved coastal zone management program must develop and submit to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval a CNPCP. The CNPCP serves as an update and expansion of the State nonpoint source management program developed under section 1329 of Title 33 (Clean Water Act). The three conditionally approved management measures must receive final approval by the USEPA and NOAA to have an approved CNPCP for the State of Oregon.

Options for Getting Full Approval of Management Measures

Forest management in critical coastal areas

There are two options outlined below for addressing increased riparian protection in the forest management measure. One option is a basin specific approach using TMDLs and the other is a region wide programmatic approach. The second approach would also be used to address high risk landslides and mitigating the impacts of legacy roads.

Option #1: TMDL Process for Increased Riparian Protection (January 2010 through January 2011)

TMDL developed for a basin that is more prescriptive and requires nonpoint sources to pollution meet the TMDL load allocations. TMDLs are a requirement of the CWA.

A more prescriptive TMDL would evaluate loadings at the landowner scale and assigns load allocations to specific sources such as: land owners, crop type, or a specific land use.

The TMDL and Water Quality Management Plan (WQMP) would be developed to:

1. Identify loading and capacity to meet a WQS (for example, temperature)'
2. Use a surrogate for the load allocation (for example, effective shade) to meet the WQS;

3. Assign load allocations to specific public and private sources identified in the TMDL;
4. Identify “safe harbor” BMP’s that could be used to meet the load allocation (for example, basal tree area retention within a riparian management area);
5. Require TMDL Implementation Plans from all sources assigned a load allocation, sources would be required to identify in their plan how they will meet their load allocation;
6. The TMDL would be issued as an administrative order by DEQ.
7. DEQ would request that the BQF implement those Las with *basin specific rules* using the proposed safe harbor BMPs (or other BMPs that are equally effective).
8. DEQ approval or disapproval of TMDL implementation Plans based on the plans ability to meet the load allocations or the basin specific rule adopted by the BOF.

If the Board declines to implement the TMDLs, DEQ could ask the EQC to petition the Board under the ORS 527.765. However, DEQ would reserve its authority to impose DMPs under ORS 4688.110 to the extent necessary to comply with Sections 303 and 309 of the CWA.

Option #2: Programmatic Process for Increased Riparian Protection, High Density Landslide Areas, & Legacy Roads (March 2010 through July 2011)

There will be combined EQC & BOF meetings to explore these areas of concern. Five joint sessions would be held one for each of the following areas:

1. CZARA litigation: background, process and legal issues and definitions, specifically on the meaning of legacy roads.
2. Policy: EQC and the CWA for achieving WQS; BQF and FPA for protecting beneficial uses
3. Implementation of TMDLs and FPA and what other land uses, owners (federal, state) and states are doing for riparian protection
4. ODF & DEQ present available technical information (such as RipStream Study results) on these three areas in regards to water quality standards, TMDLs and Category 4B
5. Recommendations by EQC and BOF on how to move forward.

Depending on the outcome of the combined EQC and BOF meetings and recommendations the EQC could petition, the BOF to begin rule changes to address identified needs. This may include increased riparian protections for small, medium and non-fish bearing streams, high density landslide areas, and legacy roads in order to receive full approval for the forestry management measure and meet the requirements of the CWA.

On-Site

DEQ will work on a rule change to require inspections by certified inspectors from either DEQ or the County of on-site systems at the time of the property transfer. Certification inspectors would occur. Inspections would at least include the tank, any treatment units, and drainfield. The schedule for development of this program is:

Policy Option Package for Rules Development completed by November 2010

Request Funding from the 2011 Oregon Legislature to Support On-Site Time of Sale Inspections- January 2011 through June 2011

DRAFT October 29, 2009

Rule Development Completed by December 2012

Rule Implementation and Inspections begin in March 2013

Urban Development

A detailed Urban TMDL implementation Plan Guidance document will be developed by DEQ. The process for developing the Guidance is:

Initial Draft Guidance Document Completed March 2010

Final Draft Guidance Document completed September 2010

Public Review of Final Draft Guidance Document completed December 2010

Final Guidance Document completed March 2011

Workshops for DMAs begin April 2011